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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,479	10/16/2000	Nobuaki Hashimoto	107280	6925
25944	7590	04/06/2006	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			GRAYBILL, DAVID E	
			ART UNIT	PAPER NUMBER
			2822	

DATE MAILED: 04/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/673,479

Applicant(s)

HASHIMOTO, NOBUAKI

Examiner

David E. Graybill

Art Unit

2822

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15,16,19,20 and 29-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15,16,19,20 and 29-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1 page.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

The amendment to the claims filed on 4-15-5 does not comply with the requirements of 37 CFR 1.121(c) because the status of claim 30 is indicated as "Currently Amended" but the claim is not submitted with markings to indicate changes that have been made relative to the immediate prior version. Amendments to the claims filed on or after July 30, 2003 must comply with 37 CFR 1.121(c) which states:

(c) *Claims.* Amendments to a claim must be made by rewriting the entire claim with all changes (e.g., additions and deletions) as indicated in this subsection, except when the claim is being canceled. Each amendment document that includes a change to an existing claim, cancellation of an existing claim or addition of a new claim, must include a complete listing of all claims ever presented, including the text of all pending and withdrawn claims, in the application. The claim listing, including the text of the claims, in the amendment document will serve to replace all prior versions of the claims, in the application. In the claim listing, the status of every claim must be indicated after its claim number by using one of the following identifiers in a parenthetical expression: (Original), (Currently amended), (Canceled), (Withdrawn), (Previously presented), (New), and (Not entered).

(1) *Claim listing.* All of the claims presented in a claim listing shall be presented in ascending numerical order. Consecutive claims having the same status of "canceled" or "not entered" may be aggregated into one statement (e.g., Claims 1-5 (canceled)). The claim listing shall commence on a separate sheet of the amendment document and the sheet(s) that contain the text of any part of the claims shall not contain any other part of the amendment.

(2) *When claim text with markings is required.* All claims being currently amended in an amendment paper shall be presented in the claim listing, indicate a status of "currently amended," and be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. Only claims having the status of "currently amended," or "withdrawn" if also being amended, shall include markings. If a

withdrawn claim is currently amended, its status in the claim listing may be identified as "withdrawn—currently amended."

(3) When claim text in clean version is required.

The text of all pending claims not being currently amended shall be presented in the claim listing in clean version, *i.e.*, without any markings in the presentation of text. The presentation of a clean version of any claim having the status of "original," "withdrawn" or "previously presented" will constitute an assertion that it has not been changed relative to the immediate prior version, except to omit markings that may have been present in the immediate prior version of the claims of the status of "withdrawn" or "previously presented." Any claim added by amendment must be indicated with the status of "new" and presented in clean version, *i.e.*, without any underlining.

(4) When claim text shall not be presented; canceling a claim.

(i) No claim text shall be presented for any claim in the claim listing with the status of "canceled" or "not entered."

(ii) Cancellation of a claim shall be effected by an instruction to cancel a particular claim number. Identifying the status of a claim in the claim listing as "canceled" will constitute an instruction to cancel the claim.

(5) Reinstatement of previously canceled claim. A claim which was previously canceled may be reinstated only by adding the claim as a "new" claim with a new claim number.

Because the response appears to be bona fide, but through an apparent oversight or inadvertence the response is non-compliant, and in order to continue to afford applicant the benefit of compact prosecution, the requirement to comply with the response within a one month time limit is waived, the amendment is entered, and the claims are examined on the merits.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features of claims 29, 33, 34, 39 and 40 must be shown or the features canceled from the claims. To further clarify, in the enlarged view of FIG. 1A,

speckling in layer 34 appears to depict features not depicted in the original view or elsewhere in the drawings, and there is no additional clarifying disclosure such as a reference character linked to written specification disclosure. Therefore, the original view and the speckling in layer 34 cannot be relied on for a showing of the features of claims 29, 33, 34, 39 and 40, and the drawings do not otherwise show the features.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in

the next Office action. The objection to the drawings will not be held in abeyance.

The disclosure is objected to because of the following informalities:

At page 5, lines 17-23, the disclosure, "The silica-based filler may be mixed in the first resin and the second resin, and a mixing ratio of the silica-based filler in the first resin may be greater than a mixing ratio of the silica-based filler in the second resin. Thus, the melt viscosity of the second resin can be made higher," appears to contradict the totality of the remaining disclosure, e.g., the disclosure at page 17, lines 17-24, "In the case of employing the anisotropic conductive film as the binder 30, a silica-based filler may well be mixed in only the second resin in order to make the melt viscosity of the second resin higher than that of the first resin. Alternatively, it is also allowed to mix the silica-based filler in the first resin and second resin, and to make the mixing ratio of the silica-based filler in the second resin greater than that of the same in the first resin."

Appropriate correction is required.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 32 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject

matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

The undescribed subject matter includes the embodiment comprising the claim 15 limitation of a coefficient of thermal expansion of the first resin being smaller than a coefficient of thermal expansion of the second resin in combination with the limitations of claim 32. To further clarify, the specification at page 3, lines 12-27, discloses for a coefficient of thermal expansion of the first resin being smaller than a coefficient of thermal expansion of the second resin, the mixing-ratio of the silica filler is greater in the first resin than the second resin. However, the specification at page 17, lines 17-24, discloses that the second resin has higher viscosity than the first resin when the mixing-ratio of the silica filler is greater in the second resin than in the first resin. Therefore, the claim 32 subject matter of a coefficient of thermal expansion of the first resin being smaller than a coefficient of thermal expansion of the second resin wherein the second resin has higher viscosity than the first resin was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

In the rejections infra, generally, reference labels are recited only for the first recitation of identical claim elements.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 15, 16, 20, 29-42 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Tsukagoshi (5120665) and Suzuki (6049038).

At column 5, line 56 to column 6, line 41; column 7, lines 8-11; column 8, line 1 to column 9, line 9; column 11, lines 46-49; column 11, line

60 to column 13, line 30; column 14, lines 24-65; column 17, lines 11-21; and column 20, line 51 to column 21, line 33, Tsukagoshi discloses the following:

A semiconductor device comprising: a semiconductor chip 11; a substrate 14 on which an interconnecting pattern 15 is formed; and a binder electrically connecting the semiconductor chip and the interconnecting pattern, the binder including: a first layer 16 including a first resin; and a second layer 18 including conductive particles dispersed only in a second resin, the second layer being disposed closer to the substrate than the first layer; wherein the binder is an anisotropic conductive film; wherein the second layer includes an epoxy resin; wherein conductive particles 3 are dispersed only in the second layer; wherein the conductive particles are dispersed only in the second layer, the second layer is thinner than the first layer, and the second resin has higher viscosity than the first resin when melted; wherein at least the first resin includes an epoxy resin; and electronic equipment 11 comprising the semiconductor device.

A semiconductor device comprising: a semiconductor chip; a substrate on which a interconnecting pattern is formed; and a binder electrically connecting the semiconductor chip and the interconnecting pattern, the binder including: a first layer including a first resin; and a second layer including electroconductive particles dispersed only in a second resin, the

second layer being disposed closer to the substrate than the first layer; wherein the binder is an anisotropic conductive film; wherein the second resin includes an epoxy resin; wherein conductive particles are dispersed only in the second layer; and wherein the second layer is thinner than the first layer, and the second layer has higher viscosity than the first layer when melted; and electronic equipment comprising the semiconductor device.

However, Tsukagoshi does not appear to explicitly disclose a coefficient of thermal expansion of the first resin being smaller than a coefficient of thermal expansion of the second resin; wherein a silica insulating filler is mixed only in the first resin; wherein a silica insulating filler is mixed in the first resin and the second resin, and a component ratio of the silica insulating filler in the first resin is greater than a component ratio of the silica insulating filler in the second resin.

Nonetheless, at column 2, lines 14-34; column 3 lines 6-25; column 4, lines 12-61; and column 5, line 57 to column 6, line 24, Suzuki discloses a coefficient of thermal expansion of the "first resin layer" being smaller than a coefficient of thermal expansion of the "second resin layer"; wherein a silica insulating filler 4 is mixed only in the first resin layer; wherein a silica insulating filler is mixed in the first resin layer and the second resin layer, and a component ratio of the silica insulating filler in the first resin layer is

greater than a component ratio of the silica insulating filler in the second resin layer. Furthermore, it would have been obvious to combine this disclosure with the disclosure of Tsukagoshi so that a silica insulating filler is mixed only in the first resin of Tsukagoshi, or a silica insulating filler is mixed in the first resin layer and the second resin layer of Tsukagoshi, and a component ratio of the silica insulating filler in the first resin layer is greater than a component ratio of the silica insulating filler in the second resin layer, to obtain a coefficient of thermal expansion of the first resin of Tsukagoshi being smaller than a coefficient of thermal expansion of the second resin of Tsukagoshi because, as disclosed by both Tsukagoshi and Suzuki as cited, it would improve the device reliability.

Although Tsukagoshi does not appear to explicitly disclose wherein a modulus of elasticity of the second resin being smaller than a modulus of elasticity of the first resin, the combination of Suzuki and Tsukagoshi discloses a coefficient of thermal expansion of the first resin being smaller than a coefficient of thermal expansion of the second resin, and, as evidenced by Kaneda (6223429), at column 5, lines 16-24, and Yamada (5959363) at column 3, lines 54-63, filler induced coefficient of thermal expansion ("coefficient of linear expansion" in Kaneda) and modulus of elasticity of a resin are inherently inversely correlated.

Claims 19 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsukagoshi and Suzuki as applied to claims 15 and 36, and further in combination with Nakamura (6344696).

Tsukagoshi and Suzuki do not appear to explicitly disclose a circuit board on which the semiconductor device is mounted.

Notwithstanding, at column 1, lines 13-36, Nakamura discloses a circuit board "mother board" on which a semiconductor device 2, 14 is mounted. In addition, it would have been obvious to provide the circuit board of Nakamura on which the device of Tsukagoshi and Suzuki is mounted because it would facilitate external electrical connection of the device.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsukagoshi and Suzuki as applied to claim 36 supra, and further in combination with Ito (6333206).

Tsukagoshi and Suzuki does not appear to explicitly disclose the second resin including a biphenyl resin.

Still, as cited, both Tsukagoshi and Suzuki disclose the second resin including an epoxy resin. In addition, at column 35, lines 6-21, Ito discloses a biphenyl epoxy resin. Moreover, it would have been obvious to use the biphenyl epoxy resin of Ito as the epoxy resin of Tsukagoshi and Suzuki because it would provide an epoxy resin having desirable properties.

Applicant's amendment and remarks filed 4-15-5 and 7-22-5 have been fully considered, are addressed by the rejections supra, and are further addressed infra.

In the remarks filed 4-15-5, applicant avers, "It is these varying compositions of resins that are recited in claims 29, 33, 34, 39 and 40. Applicant has, therefore, complied with the requirements of Rule 83(a)."

The following is a quotation of MPEP § 1.83(a):

The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box). In addition, tables and sequence listings that are included in the specification are, except for applications filed under 35 U.S.C. 371, not permitted to be included in the drawings.

It is respectfully submitted that applicant has not complied with the requirements of § 1.83(a) because the drawings do not show every feature of the invention specified in the claims.

Also, applicant states, "Claims to compositions do not require drawings (see, e.g., MPEP §601.01(f))."

A partial quotation of MPEP § 601.01(f) follows:

601.01(f) [R-3] Applications Filed Without Drawings

35 U.S.C. 111(a) (2)(B) and 35 U.S.C. 111(b)(1)(B) each provide, in part, that an "application shall include . . . a drawing as prescribed by section 113 of this title" and 35 U.S.C. 111(a)(4) and 35 U.S.C. 111(b)(4) each provide, in part, that the "filing date. . . shall be the date on which . . . any required drawing are received in the Patent and Trademark Office." 35 U.S.C. 113 (first sentence) in turn provides that an "applicant shall furnish a drawing where necessary for the understanding of the subject

matter sought to be patented." Applications filed without drawings are initially inspected to determine whether a drawing is referred to in the specification, and if not, whether a drawing is necessary for the understanding of the invention. 35 U.S.C. 113 (first sentence). It has been USPTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence). The same practice has been followed in composition applications. Other situations in which drawings are usually not considered necessary for the understanding of the invention under 35 U.S.C. 113 (first sentence) are:

As such, applicant's statement is respectfully traversed because § 601.01(f) is not relevant to the objection to the drawings because § 601.01(f) is directed only to drawings necessary for a filing date.

Applicant asserts, "First, Suzuki only appears to disclose, with respect to coefficients of thermal expansion resin with different layers having different thermal expansion rates (col. 6, lines 7- 24). Thus, if anything, one of ordinary skill would have used Suzuki's single layer to obtain the effect thereof taught by Suzuki. The resulting structure therefore would not have two resins, as recited in the claims."

This assertion is respectfully deemed unpersuasive because applicant has not identified the referent of the phrase "Suzuki's single layer," and the referent is not otherwise identifiable. Moreover, the statement, "if anything, one of ordinary skill would have used Suzuki's single layer to obtain the effect thereof taught by Suzuki" is respectfully deemed unpersuasive because it is unsupported by proof or a showing of facts; hence, it essentially amounts to mere conjecture and it is of no probative value. See

MPEP 716.01(c), and, Ex parte Gray, 10 USPQ2d 1922 (Bd. Pat. App. & Inter. 1989) (statement in publication dismissing the "preliminary identification of a human b - NGF - like molecule" in the prior art, even if considered to be an expert opinion, was inadequate to overcome the rejection based on that prior art because there was no factual evidence supporting the statement); In re Beattie, 974 F.2d 1309, 24 USPQ2d 1040 (Fed. Cir. 1992) (declarations of seven persons skilled in the art offering opinion evidence praising the merits of the claimed invention were found to have little value because of a lack of factual support); Ex parte George, 21 USPQ2d 1058 (Bd. Pat. App. & Inter. 1991) (conclusory statements that results were "unexpected," unsupported by objective factual evidence, were considered but were not found to be of substantial evidentiary value).

Also, applicant alleges, "the Office Action provides no reference to any specific teaching or suggestion in either of the applied prior art references that it would have been obvious to one of ordinary skill in the art to modify Tsukagoshi with the teachings of Suzuki to obtain a product such as is recited in the claims. Applicant respectfully submits that such a feature would not have been obvious to one of ordinary skill in the art."

This allegation is respectfully traversed because it is recognized that references cannot be arbitrarily combined and that there must be some logical reason why one skilled in the art would be motivated to make the

proposed combination of references. In re Regel 188 USPQ 136 (CCPA 1975). The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin 170 USPQ 209 (CCPA 1971); In re Rosselet 146 USPQ 183 (CCPA 196). References are evaluated by what they collectively suggest to one versed in the art, rather than by their specific disclosures. In re Simon, 174 USPQ 114 (CCPA 1972); In re Richman 165 USPQ 509, 514 (CCPA 1970). See also Ex parte Jones, 62 USPQ2d 1206 (BdPatApp&Int 2001), (The applicant and the examiner have apparently assumed that there always must be "motivation" to combine teachings of the prior art to support a rejection based on § 103(a). The assumption is not correct. The word "motivation" or a word similar to "motivation" does not appear in 35 U.S.C. § 103(a). While a finding of "motivation" supported by substantial evidence probably will support combining teachings of different prior art references to establish a *prima facie* obviousness case, it is not always necessary. For example, where a claimed apparatus requiring Phillips head screws differs from a prior art apparatus describing the use of flathead screws, it might be hard to find motivation to substitute flathead screws with Phillips head screws to arrive at the claimed invention. However, the prior art would make it more than clear that Phillips head screws and flathead screws are viable alternatives serving the same purpose. Hence, the prior art would

"suggest" substitution of flathead screws for Phillips head screws albeit the prior art might not "motivate" use of Phillips head screws in place of flathead screws. What must be established to sustain an obviousness rejection is a legally sufficient rationale as to why the claimed subject matter, as a whole, would have been obvious notwithstanding a difference between claimed subject matter and a reference which is prior art under 35 U.S.C. § 102. Once a difference is found to exist, then the examiner must articulate a legally sufficient rationale in support of a § 103(a) rejection. The legally sufficient rationale may be supported by a reason, suggestion, teaching *or* motivation in the prior art which would have rendered obvious the claimed subject within the meaning of § 103(a). *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637(Fed. Cir. 1998) (there must be some *teaching, suggestion or motivation* in the prior art to make the specific combination that was made by the applicant); *In re Gartside*, 203 F.3d 1305, 1319, 53 USPQ2d 1769, 1778(Fed. Cir. 2000) (the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a *teaching or motivation* to combine prior art references); *Pro-Mold and Tool Co. v. Great Lakes Plastics Inc.*, 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1629(Fed. Cir. 1996) ("there must be a *reason, suggestion, or motivation* *** to combine [the teachings of] *** references ***"); *Smiths Industries Medical Systems, Inc. v. Vital Signs*,

Inc., 183 F.3d 1347, 1356, 51 USPQ2d 1415, 1420-21 (Fed. Cir. 1999)

(there is no basis for concluding that an invention would have been obvious solely because it is a combination of elements that were known in the art at the time of the invention; the relevant inquiry is whether there is a *reason*, *suggestion*, or *motivation* in the prior art that would lead one of ordinary skill in the art to combine the teachings of the references)). In the instant rejection, legally sufficient rationale in the form of the specific disclosure of Tsukagoshi as to why the claimed subject matter, as a whole, would have been obvious, has been provided.

In addition, applicant contends that the conclusion of obviousness is based upon improper hindsight reasoning. Indeed, it has been recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning; yet, so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was conceived, and so long as it does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper. In re McLaughlin, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971). To this end, it is respectfully submitted that these criteria are satisfied in the rejection of the instant invention.

Applicant also requests, "should the Examiner choose to maintain any of (1) the objection to the drawings; (2) the rejection of the enumerated

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claims under 35 U.S.C. §112, first paragraph; or (3) any of the prior art rejections of the Office Action, Applicant's representative be [sic] granted a personal interview with Examiner Graybill and the Supervisory Patent Examiner under the guidance provided in MPEP §707.02."

The following is a quotation of MPEP §707.02:

The supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying them.

The supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent *>Office< action with a view to finally concluding its prosecution.

Any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort >should be< made to terminate its prosecution. In order to accomplish this result, the application is to be considered "special" by the examiner.

It is respectfully submitted that MPEP §707.02 provides no guidance directed to the granting of personal interviews.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee

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pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

For information on the status of this application applicant should check PAIR:

Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alternatively, applicant may contact the File Information Unit at (703) 308-2733. Telephone status inquiries should not be directed to the examiner. See MPEP 1730VIC, MPEP 203.08 and MPEP 102.

Any other telephone inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Graybill at (571) 272-1930. Regular office hours: Monday through Friday, 8:30 a.m. to 6:00 p.m.
The fax phone number for group 2800 is (571) 273-8300.



David E. Graybill
Primary Examiner
Art Unit 2822

D.G.
23-Mar-06